IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24384 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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JAINABBIBI HASAMBHAI - Petitioner(s)
Versus
KHAIRUBIBI WD/O AHMEDBHAI JAMMABHAI MANIYAR & 2 - Respondent(s)

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Appearance :
MR ASHOK K PADIA for Petitioner(s) : 1,
MR MA KHARADI for Respondent(s) : 1 - 2.
None for Respondent(s) : 3, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5,3.2.6

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 15/03/2007

ORAL JUDGMENT

1. Jainabbibi Hasambhai, petitioner has filed this petition under article 227 of the Constitution of

India and prayed that the impugned order and decree passed by the Small Causes Court No.6, Ahmedabad in C.M.A. No.183 of 2002 dated 16/4/2004 and judgment and decree passed by the Appellate Bench of Small Causes Court, Ahmedabad in C.R.A No.13 of 2004 dated 21/9/2006 be set aside and the Civil Misc. Application No.183 of 2002 may be dismissed with costs throughout. The said petition was filed on 1/11/2006. Matter was placed for hearing before this Court and this Court has passed an order on 1/3/2007.

2. On behalf of the petitioner, I have heard Mr.Ashok K.Padia, learned advocate and on behalf of respondent nos.1 and 2, Mr.M.A.Kharadi, learned advocate appears.

3. Pursuant to the order dated 1/3/2007, record and proceedings have also received by this Court. This Court has examined the record and proceedings of the matter also. In view of the same, matter is taken up for final disposal in this behalf with consent of both the learned advocates.

4. From the record, it appears that petitioner is a

landlady, succeeding her father, who had let out the premises to Jummabhai, father-in-law of respondent no.1. Father-in-law of respondent no.1, Jummabhai has expired and his two sons namely Ahmed and Usman also died in the year 1991. On 14/5/1992, mother-in-law of respondent no.1 has addressed a notice to the petitioner calling upon her to accept the rent. On 25/5/1992, petitioner replied to the said notice, accepting possession of respondents in this behalf.

5. Petitioner thereafter, addressed a legal notice on 14/9/1992 to respondent no.1-Khairubibi-widow of Ahmedbhai Jummabhai Maniyar to hand over the possession of the premises. The petitioner filed a caveat on 18/9/1992 against the respondents in this behalf. Anvarhusen Ahmedbhai Maniyar has filed complaint against the petitioner and others somewhere on 23/4/1993 before the Commissioner of Police. Thereafter, Khairubibi-widow of Ahmedbahi Jummabhai Maniyar filed complaint against Hurabibi-widow of Jummabhai Chhotubhai who happened to be her mother-in-law who is acting in the collusion with the land lady in this behalf.

6. In view of the same, it appears that Civil Suit No.1372 of 1996 has been filed by Jainabibi against Hurabibi-widow of Jummabhai Maniyar for possession of the property in question. The learned Judge by his judgment and order dated 11/2/2002 in the said suit was pleased to decree the suit of the plaintiff and prayer for possession was granted and it was held that defendant shall hand over peaceful and vacant possession of the suit premises on or before 31/3/2002 and also pay Rs.504/- towards the decretal dues and the defendant shall pay the rent pending the suit at the rate of Rs.14/- per month and she shall pay future mesne profit at the rate of Rs.14/- per month from the date of judgment till she hands over peaceful and vacant possession of the suit premises to the plaintiff.

7. As the respondent no.3 failed and neglected to hand over vacant and peaceful possession of the premises, Darkhast No.70 of 2002 was instituted by the petitioner. The possession was taken off from the respondent Nos.1 and 2 on 12/8/2002.

8. In view of this development, Misc. Civil Application No.183 of 2002 has been filed by

respondent nos.1 and 2 against Jainabbibi and Hurabibi (present petitioner and respondent no.3 respectively) with a prayer that the possession of the suit property may be restored to the respondent nos.1 and 2 herein. The said application was filed on 14/8/2002. It was also stated that they were the legal tenant of the premises. However, the petitioner has taken possession forcefully by committing fraud with the Court and obtained possession of the premises in question and therefore the possession of the property may be handed over to the applicants.

9. In view of the fact that the petitioner obtained possession as indicated above, the petitioner withdrew execution application on the ground that no objection was raised by the respondent no.3. The Small Cause Court No.8 by order dated 16/4/2004, allowed the Civil Misc. Application 183 of 2002 filed by respondent no.1 and 2 and directed the opponent no.1, Jinabbibi-petitioner to hand over the peaceful and vacant possession of the premises on or before 16/5/2004 which has been subject matter of H.R.P.Civil Suit No.1372 of 1996 i.e. the premises bearing Census No.1604 situated

at Rajpur-Hirpur, Gomtipur, Maniarvad, Nr. Jain Derasar, Ahmedabad. The learned Judge has further directed that opponent no.1 shall not let, sub-let, transfer or assign or sell out the said premises to third party till she shall restore the possession to the applicants as per the order as per the order stated above.

10. Being aggrieved and dissatisfied with the said order, Jainabbibi Hasambhai- petitioner herein has filed Civil Revision Application No.13 of 2004 before the Appellate Bench of Small Cause Court at Ahmedaad on 17/6/2004. The Appellate Bench, Small Causes Court, Ahmedabad by order dated 21/9/2006, dismissed the aforesaid Civil Revision Application No.13 of 2004 and confirmed the judgment and decree passed by the Small Causes Court dated 16/4/2004. The appellate Bench has held that viz., the learned Trial Judge has not committed any error by not considering the evidence before him properly. The learned Trial Judge has not committed any error by exhibiting documentary evidence produced by the opponents though applicants have objected for it. The learned Trial Judge has not committed any error in raising points which are raised in the

application. The learned Trial Judge has not committed any error by not considering the fact that documents which are produced by applicant in that Misc. Application are of suit premises up till 1992 and after that time documents were produced by the appellants are of the adjoining premises. The learned Trial Judge has not committed any error by exhibiting rent receipts from mark 22/2 to 22/14 as Exhs.27 to 40. The learned Trial Judge has not committed any error by not appreciating properly documents which are produced from Exhs.95 to 99. The learned Trial Judge has not committed any error by deciding that opponent by fraud has taken order against legal tenant and has removed them from the suit premises. The learned Trial Judge has not committed any error by passing restoration of possession without getting explanation from the applicant that under which provision he has asked such type of order.

11. Being aggrieved and dissatisfied with the said judgment of the learned Judge, the present petitioner has filed this petition as indicated above.

12.I have heard Mr.A.K.Padia, learned advocate for the petitioner in this behalf and Mr.M.A.Kharadi, learned advocate on behalf of the respondent nos.1 and 2. I have also gone through the record and proceedings of the matter. Mr.Padia has vehemently argued and tried to assail the impugned judgment in the petition. He has pointed out that the Court below has committed serious error of jurisdiction and law and therefore, this Court may entertain the petition. The learned Judge has not properly considered the provisions of the Bombay Rent Act, particularly Section 5(11)(c) in this behalf.

13.Mr.Kharadi, learned advocate for the respondents states that in view of chequered history which is set out earlier and in view of the fact that Court below has taken into consideration all the aspects and appreciated the same, there is neither error of law nor error of jurisdiction in this behalf.

14.I have considered the findings given by both the learned Trial Court as well as Appellate Court. Both the Courts below have considered the evidence on record both oral and documentary and given very cogent and convincing reasons. I do not find any

error of jurisdiction or any error of law in both the orders in this behalf. Moreover, Khairubibi-applicant in the application, respondent herein had filed voluminous evidence on record namely Exh.4/1 i.e. xerox copy of rent receipt from the original owner of the premises, Hatubhai Amirbhai dated 9/5/1991 and also another rent receipt at Exh.4/2 dated 18/3/1992, Exh.4/3 i.e. xerox copy of the election card dated 14/7/1994 where her name is shown in connection with the premises in question. Exh.4/4 is a complaint filed by Jainabbibi through his advocate Faridkhan against Khairubibi dated 14/9/1992 in this behalf. Exh.4/5 is the complaint filed by Khairubibi against widow of Bai Hurbai Jummabhai before the Police Commissioner on 25/5/1993. Exh.46 is the Register A.D. Receipt. Exgh.4/7 is identity card issued by the Election Commissioner in favour of Maniyar Ruksanabanu. Exh.4/8 is identity card issued by the Election Commissioner in favour of Sanghi Anvarhusen and Exh.4/9 is ration card issued in favour of Mainiar Ahmedbhai Jummabhai.

15.The Court Commissioner was also appointed and the Court Commissioner has produced a report at Exh.8

also in this behalf. The Court Commissioner has also held that the owner of the property is Jainabbibi Hatubhai. Some of the goods also stored there. Said report is dated 15/8/2000 at Exh.14/3 and also map produced by the Court Commissioner at 14/4.

16.All these evidence shows that respondent no.1 and 2 were occupying the suit premises in the capacity of tenants in the year 1991-92 and even prior to that. Despite such voluminous evidence on record of the case and prevailing situation, they were not joined as party defendants in HRP 1372 of 1996 and eviction decree was passed.

17.In view of these facts and circumstances of the case and in view of earlier proceedings, in my view, both the Courts below have given very cogent ad convincing reasons which are supported by the documentary evidence and this Court do not find it fit to interfere with the same in view of the Article 227 of the Constitution of India.

18.I have considered the facts and circumstances of the case. I have also considered that this petition

is filed under Article 227 of the Constitution of India. The petitioner has challenged the judgment and decree dated 16.4.2004 passed by the Small Causes Court, Ahmedabad, in C.M.A. No. 183 of 2002 and the judgment and decree dated 21.9.2006 passed by the Appellate Bench of Small Causes Court, Ahmedabad, in C.R.A. No. 13 OF 2004. The petitioner has filed the present petition on 1.11.2006. I have gone through both the judgments of the lower Courts which have been challenged in this petition.

19.It is well settled that under Article 227 of the Constitution of India this Court has a very limited jurisdiction and in view of the judgment of the Hon'ble Supreme Court in the case of SURYA DEVI RAI VS. RAM CHANDER RAI AND OTHERS reported in (2003) 6 SCC 675 particularly paragraph Nos. 38 and 39 of the said judgment where the Hon'ble Apex Court has held that only in limited circumstances the High Court has jurisdiction under Article 227 of the Constitution of India to entertain the petition.

20.I have considered the facts and circumstances of the case. In fact, I have also considered both the judgments and the facts stated in the said

judgments delivered by the Courts below. In my view both the Courts below have neither committed any error of jurisdiction and nor even error of law. Both the Courts below have, after going through the evidence on record has given very cogent and convincing reasons and the learned counsel for the petitioner has not been able to show any valid ground to assail the orders passed by the Courts below. In view of the same, there is no substance in the present petition. Hence the petition is rejected.

21.Mr.Ashok Padia, learned advocate has prayed for interim relief. Mr.Kharadi, learned advocate for the respondent nos.1 and 2 states that the prayer of the petitioner cannot be sustained on the ground that judgment and decree was passed on 21/9/2006 and this petition was filed on 1/11/2006 and thereby matter was placed for hearing before this Court on 8/12/2006 and on 1/3/2007 only. However, this Court has not passed any interim order. Mr.Kharadi, learned advocate states that now he does not want to continue with his statement. Statement made by Mr.Kharadi now will not be continued in view of the final disposal of the

matter. Record and proceedings to be retransmitted to the concerned Court below.

(K.M.Mehta, J.)

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